



## Legality Letter of Statement of Khilaf in Indonesia Criminal Justice System

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### ABSTRACT

*In criminal law, a person charged with a criminal offense may be punished if it meets two matters, namely his act is unlawful, and the perpetrator of a crime may be liable for the indicated action (the offender's error) or the act may be dismissed to the perpetrator, and there is no excuse. The reasons may result in the death or the removal of the implied penalty. But it becomes a matter of how if the Letter of Statement Khilaf is the answer to solve the legal problems. This should be reviewed in the application of the law, are there any rules governing wrong statements in the criminal justice system. By using a declaration of khilaf as a way out of criminal matters, then the statement should be known in juridical rules. This study uses normative juridical methods, by conceptualizing the law as a norm rule which is a benchmark of human behavior, with emphasis on secondary data sources collected from the primary source of the legislation. The result of this research is that the statement of khilaf has legality, it is based on Jurisprudence No. 3901 K / Pdt / 1985 jo Article 189 Paragraph (1) of Indonesian criminal procedure law. However, this oversight letter needs to be verified in front of the court to be valid evidence, but this letter of error is not a deletion of a criminal offense, because the culpability of the defendant has justified the crime he committed. Such recognition, cannot make it free from the crime that has been committed.*

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## **A. Introduction**

The provisions of the legality principle are stipulated in Article 1 paragraph (1) of the Indonesian Penal Code (KUHP) which reads: 'No incident can be criminal other than the force of provisions of the preceding criminal law' (Geen feit is strafbaar and uit kracht van een daaraan voorafgegane wettelijke strafbepaling). This legality principle becomes a basic guarantee for individual freedom by limiting what is prohibited precisely and clearly. This freedom can refer to both material law and formal law in the judicial system in Indonesia. The principle of legality as defined in the constitution of the criminal law or constitution of each country, is one of the fundamental principles that must be maintained for the sake of legal certainty. The meaning of the principle of legality must be interpreted wisely in the framework of law and justice enforcement. When viewed from the situation and condition of the birth of legality principle, then the principle is to protect individual interest as the main characteristic of criminal law according to classical flow.<sup>1</sup> In criminal procedure law known as *nullum iudicium sine lege* principle which is summarized in (Article 3) of the Criminal Procedure Code states that criminal law enforcement (including the judiciary) is conducted in the manner stipulated in the legislation. It can be argued that the procedural law contains standards of conduct in carrying out the material law as a form of due to the process of law.

The importance of the legality principle (*processuul*) in the implementation of the criminal procedural law is based on the same consideration that prevents the arbitrariness of the authorities, in this case, criminal law enforcement officials. Criminal law enforcers who work on behalf of the public interest have such wide and far-reaching powers, including reducing and abolishing the basic rights of citizens by imposing sanctions. In the process of implementing such rules in the Criminal Procedure Code (KUHP) becomes particularly important in the examination procedure including evidence in the criminal law. Article 17 of the Criminal Procedure Code should be interpreted at least two shreds of evidence according to Article 184 Criminal Procedure Code, namely witness statements, expert information, letters, guidance, and description of defendant. In the Criminal Procedure Code, such as evidence of witness testimony and expert information, the documentary evidence is only stipulated in one article, namely Article 187, which reads the letter as referred to in Article 184 paragraph (1) letter C, made on oath of office or reinforced by an oath:

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<sup>1</sup> Sri Rahayu, "Implications of Legality Principles Against Law Enforcement and Justice", *Innovative Journal*, 7 (3), (2014), p. 2

1. Official proceedings and other letters in the official form prepared by the authorized or authorized public authority containing information about the event or circumstances heard, seen or experienced by itself, accompanied by clear and unequivocal reasons for the information;
2. A letter made by the provisions of legislation or letters made by the officer concerning matters belonging to the governance which it is responsible for and to prove something or something;
3. A certificate from an expert containing opinions based on his or her expertise on a matter or something of circumstance formally requested thereof;
4. Other letters which may only apply if they relate to the contents of other evidence tools.

According to Big Indonesian Dictionary the meaning of the letter is paper and so on which is inscribed (various-content as it is, meaning) while the meaning of the word Statement is: it states; acts declare: notifications, and If combined, the definition of a statement is a paper and so on which says things stating/acts declaring/notification.

Many legal issues are increasingly growing. The description of crime events presented by national and local media clearly shows concern. One such crime is the persecution or abuse of a child committed by an adult.<sup>2</sup> The development of persecution is found in many newspapers and online letters (website). One of them is the case of child persecution by a group of mass organizations in Jakarta. In that case, the Jakarta Metropolitan Police officially assigned two perpetrators of the persecution action, AM (22) and MAT (55), as suspects. Both are perpetrators of violence against teenagers named PMA (15) in Jakarta.<sup>3</sup> Persecution is a crime that is very disturbing to society. So for that, the perpetrator who carried out the persecution will be sentenced to criminal by subject to several articles contained in the Criminal Code (Criminal Code). In the applicable legal legality The persecutor is charged with Article 80 paragraph 1 juncto Article 76 sub-paragraph c of Law No. 35 on 2014 of Child Protection juncto Article 170 of the Criminal Code. Also, Article 368 may be subject to extortion, Article 369 on threats, Article 351 on Persecution, Article 28 Paragraph 2 of ITE Law on Insult or Article 156a of the Criminal Code.

Article 368 of the Criminal Code on extortion states:

*"Whosoever with the intent to benefit himself or others unlawfully, compel a person with violence or the threat of force to give something, wholly or partially, belongs to that person or another person, or to make debt or waive*

<sup>2</sup> In Big Indonesian Dictionary explained that persecution means arbitrary hijacking of a person or a number of citizens and hurt, harassed, or crushed, Source KBBI online <https://kbbi.web.id/persekusi>, accessed on 25 May 2018

<sup>3</sup> <https://tirto.id/lpsk-proses-permohonan-perlindungan-anak-korban-persekusi-cpVc>

*a receivable, is threatened extortion with a maximum of nine months imprisonment "*

Article 170 on Beatings states:

*"Whosoever expressly and by force together to use violence against persons or goods shall be threatened with a maximum imprisonment of five years and six months."*

Article 369 of the Criminal Code on threatening mentions:

*"Anyone with the intent to benefit himself or others against the law. with the threat of contamination either by oral or written or by threatening to disclose a secret, to force a person to give something that is wholly or partly owned by that person or another person. or to make debts or write off accounts, threatened with a maximum imprisonment of four years. "*

Article 351 on Persecution states:

- "(1) Persecution shall be subject to imprisonment of a maximum of two years and eight months or a fine of four thousand five hundred rupiahs,*  
*(2) If the act resulted in serious injury, the guilty party should be punished with a maximum imprisonment of five years.*  
*(3) If resulted in death, threatened with imprisonment maximum of seven years.*  
*(4) With mistreatment deliberately deliberate damaging health.*  
*(5) Trials to commit this crime are not criminalized."*

The elucidation of the articles relating to the act of persecution itself indicates that the perpetrator or act of persecution is a criminal offense that can upset a person, group, citizen, and others, whose actions must be eradicated to bring a sense of comfort to Indonesian citizens. However, the eradication or settlement of problems or cases of Persecution is the authority and responsibility of law enforcement in Indonesia, one of them is the police. But what if the action was resolved with a non-litigation path by making a statement of error?

Solving by making a statement of errors (accidental) becomes important to be discussed, especially the legality of the letter. Letters in the criminal or civil procedure can be used as evidence. This evidence will support the passage of the legal system especially on the trial process is often called proof. The proof is an issue that plays an important role in the process of examining the trial. By the existence of the proof is determined the fate of the defendant. The judge has confidence in the existing evidence.<sup>4</sup> If the result of the evidence with the evidence provided by the law is not sufficient to prove the defendant's accused, the accused shall be released from the sentence. If there is a reason/basis for the abolition of the penalty, then no

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<sup>4</sup> Rusyadi, "The Power of Evidence in the Trial of Criminal Cases", *Journal of Laws of PRIORIS*, 2, (2016), p. 132.

penalty is given. Such reasons are in the form of matters or circumstances which may result in a person who has committed an act expressly prohibited and threatened with punishment by the Criminal Code (Penal Code) but not punishable. Conversely, if the defendant's defendant can be proved using evidence mentioned in Article 184 KUHAP, then the defendant shall be declared guilty, and the Panel of Judges shall impose criminal punishment by the article that is threatened. Based on this, then further discussed in this paper about how the legality of the statement "khilaf" in the criminal justice system? And whether the declaration of khilaf can be used as a reason for criminal eradication?

## **B. Method**

The method used is the normative juridical literature research (librarian research), in the form of research on the data of legal materials, both primary, secondary and tertiary. While the primary data in this study only acts as supporting data.<sup>5</sup> This study also uses several approaches, namely statutory approach (the statute approach) which was done by reviewing all laws and regulations related to legal issues handled.<sup>6</sup> The legal issues dealt with in this study are the rules of criminal removal in positive Indonesian law and the legality of "false" claims in the criminal justice system. The approach used is a normative juridical approach that is by reviewing or analyzing secondary data consisting of various literature and journals that discuss the reason for the eraser of the statement "khilaf." The results of this study are descriptive analytical and prescriptive. Descriptive analytical is a descriptive study, limited to the effort to express a problem and the situation as it is, so that it is only revealing or exposing a fact or event that exist in detail, systematic, and comprehensive while prescriptive is a solution to the legal issues raised and etymologically means what it should be.<sup>7</sup>

## **C. Discussion**

### **1. Legality of Statement of Khilaf in the Criminal Justice System**

A system is a braid of some elements into a single function. The punishment system holds a strategic position in the effort to tackle the crime that occurred. The punishment system is legislation relating to criminal

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<sup>5</sup> Rony Hanitiyo Soemitro, *Metode Penelitian Hukum dan Juri Metri*, Jakarta: Ghalia Indonesia, (1994), p. 5.

<sup>6</sup> Peter Mahmud Marzuki, *Penelitian Hukum*, Jakarta: Kencana, (2010), p. 93.

<sup>7</sup> Titon Slamet Kurnia dkk, *Pendidikan Hukum, Ilmu Hukum dan Penelitian Hukum Di Indonesia: Sebuah Reorientasi*, Yogyakarta: Pustaka Pelajar, (2013), p. 129.

sanctions and punishment. If the definition of the punishment system is broadly defined as a process of granting or imposing a criminal by a judge, it can be said that the penal system covers the entire legislation governing how the penal code is enforced or operated concretely so that a person is punished by criminal law.

In the Code of Criminal Procedure the system of proof is stipulated in Article 183 which reads "The judge shall not impose a penalty on a person except if with at least two valid evidence he/she obtains the conviction that a criminal act really takes place and that the offender is guilty of doing so." then the judge's decision must be based on 2 (two) terms, namely minimum 2 (two) shreds of evidence and from the evidence, the judge obtains the belief that the defendant is guilty of a crime. The verification consists of witness testimony; expert description; letter; instructions; and the defendant's statement.

If viewed regarding criminal procedure law, then the letter is one of the evidence recognized in Article 184 KUHAP. Reviewed from the perspective and practice of the Indonesian criminal justice system, the criminal procedure law (formal criminal law) commonly referred to as the Dutch terminology *formeel strafrecht* or *strafprocesrecht* is very important in its existence to guarantee, uphold and defend the material of criminal law. Through the formal (formal) law, any individual who commits a violation of the law can be processed in a court hearing because, according to criminal procedure law to prove the guilt of a defendant, he must pass a hearing before a court hearing and to prove whether or not the defendant did the deed charged required a proof.

People who deny or do not do what has been stated in the letter of the statement are often called *wansprestasi* because the statement is categorized as an agreement. It becomes a matter of how the validity of the statement, in this case, the statement of *khilaf*, whether including a treaty which is the domain of civil law or criminal law. Such matter becomes necessary for its enforcement in the judicial system to be determined by its application. The application of the law should review this, are there any rules governing the declaration in this matter "false statements" in the criminal justice system.

The element of the agreement under Article 1320 of the Civil Code agrees those who commit themselves, the ability to make an engagement, a certain matter, a lawful cause. In general, there is parties at least 2 (two) parties, agreement/consent, statement of will, fill each other, there is an object in the form of objects, there is the purpose in the form of transfer of rights of agreement object, certain form both oral and written. If you see the elements of the agreement above, that the Statement Letter is not an agreement (civil law), because:

1. Conducted by one party (one party)
2. There is no agreement; there is a unilateral statement
3. No rights and obligations arise for both parties

When viewed from the rules of applicable law then the Statement Letter does not include an agreement which is the domain of civil law, because:

1. The statement made by one party
2. There is no agreement; there is a unilateral statement of the one who recognizes an error/guilty
3. No rights and obligations arise for both parties

If viewed from the side of the criminal law the material will see the elements of the criminal offense, someone who makes a statement and then deny or not do what has been stated it then it can be said as a crime.

Criminal offenses that can be suspected are:

#### Article 242 Paragraph (1) of the Criminal Code

*"Whoever in a state in which the law determines to give statements on oath or to institute a legal consequence to such information shall intentionally give false statements on oath, either by oral or written, personally or by his designated special authority to it is, threatened with imprisonment for a maximum of seven years."*

#### Article 378 of the Criminal Code

*"Anyone with the intent to benefit himself or others against the law, by using false or false dignity, by trickery or by a series of lies moving others to surrender something to him, or to lend and waive accounts, is threatened fraud with a maximum imprisonment of 4 (four) years."*

If using this article, we shall be guided by the jurisprudence of the Supreme Court. 1601.K / Pid / 1990 dated July 26, 1990. Since Indonesian independence, the ideals of the founding fathers of the nation is to establish a State of Law (Rechtsstaat). It is written in the Explanation of the 1945 Constitution which then after experiencing the Fourth Amendment of the Constitution is affirmed into the formulation of Article 1 Paragraph (3) of the 1945 Constitution that "the State of Indonesia is the State of Law." Along with the development process initiated by the government starting from the first President until the seventh President at this time, the development of law in Indonesia continues to run, although until now the results have not fully met the expectations of the community. Even many legal observers who judge that the law in Indonesia is still chaotic, with very diverse criteria, because of the complexity of the problems and weaknesses of law that can be disclosed either from legal institutions, aspects of legal substance or legal culture.

Everyone is entitled to personal protection, family, honor, dignity, and property under his control, and is entitled to a sense of security and

protection from the threat of fear to do or not to do something that is a basic right to live in peace. A sense of security and freedom of pressure both physically and psychically is a fundamental right that cannot be negotiable in its fulfillment. The Indonesian constitutional law explicitly protects these needs. Article 28G of the 1945 Constitution stipulates that:

"Everyone is entitled to personal, family, honor, dignity and property protection under his control, and is entitled to a sense of security and protection from the threat of fear to do or not to do something constituting human rights."

Such forms of protection or fulfillment of such articles become one of the objectives in the conviction of a person who is considered guilty. When there is a legal issue, and in its development is used *khilaf* assertion as a way out of the problem, then should the statement be known in juridical rules. So, when an act exists, as a rule, it can be said that the legality of the act is recognized in writing.

In Indonesia's positive law the principle of a criminal case cannot be settled out of court, although in certain cases it is possible to have a case settlement out of court. However, the law enforcement practices in Indonesia are often criminal cases settled out of court through the discretion of law enforcement officers, peace mechanisms, customary institutions and so on. The implications of the practice of settling cases outside the court so far there is no formal legal basis, so it is also common to have an informal case of peaceful settlement through the customary law mechanisms, but still processed by the court according to the applicable law.<sup>8</sup>

If making a statement of mistakenness as evidence, relate to this, if we refer to the jurisprudence of the Supreme Court. 3901 K / Pdt / 1985 dated 29 November 1988 states *"Statements which are mere statements of persons who give statements without being examined in court, have no evidentiary power (uniformly testimony)"* This jurisprudence can also be attributed with Article 189 Paragraph (1) of the Criminal Procedure Code which states *"The defendant's description is what the defendant stated in the congregation about the acts he committed or which he knew or experienced personally."*

So if the evidence is in the form of a statement, the first thing to prove is that the statement must be confirmed by the author in front of the court, then the statement will have the evidentiary power, that is, as the witness/statement of the defendant. It is just that the statement should be verified in front of the court. Then, if it has been confirmed the truth of the

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<sup>8</sup> Lilik Mulyadi, "Penal Mediation in Indonesia's Criminal Justice System: Assessment of Principles, Norms, Theories and Practices", *Journal of Yustisia*, 2 (1), (2013), p. 2. Retrieved June 19, 2018 <https://jurnal.uns.ac.id/yustisia/article/viewFile/11054/9892>



declaration, then the judge will make a consideration through the letter of the statement in complying Amar, not as the abolition of crime (release).

## 2. Reasons for Crime Removal In Positive Law of Indonesia

Criminal law is a legal rule that binds to an act that meets certain conditions of a criminal effect.<sup>9</sup> Similarly, the State in the imposition of a criminal must ensure the independence of individuals and keep the human person honored. Therefore, the punishment must have a purpose and function that can maintain the balance of individuals with the interests of the community to achieve common prosperity.

In criminal law, a person charged with a criminal offense may be punished if it meets two matters, namely his act is unlawful, and the perpetrator of a crime may be liable for the indicated action (the offender's error) or the act may be dismissed to the perpetrator, and there is no excuse. The reasons may result in the death or the removal of the implied penalty. It can be described as follows:

### 1. Acts/ Acts against the law.

The alleged act must be proven to comply with the formulation of criminal offenses charged (against the formal law), contrary to the norms or norms of law generally accepted in society (against the material law) and there is no reason to abolish the unlawful nature of the act (reason justification).

### 2. The perpetrator of a criminal offense may be held accountable for the alleged offense (the offender's wrongdoing), or the action may be dismissed to the perpetrator, and there is no excuse for forgiveness.

A person accused of a criminal offense may rationalize the defense or reason of criminal abolition. Reasons can be general (called general defenses), meaning they can be filed for crime or criminal conduct in general. Another reason is special (called special defenses) which can only be filed for a particular crime or offense. The general defenses include:<sup>10</sup>

- a. *Compulsion*
- b. *Intoxication*
- c. *Automatism*
- d. *Insanity*
- e. *Infancy*
- f. *Consent of the victim*

The special defenses include:

<sup>9</sup> Sudarto. *Hukum Pidana I*, Semarang: Yayasan Sudarto Fakultas Hukum UNDIP, (1990).p. 9.

<sup>10</sup> Barda Nawawi Arief, *Perbandingan Hukum Pidana*, Jakarta: Raja Grafindo Persada, (1994), pp. 50-51.

In the case of offender abortion, if it is done based on the reasons, among others:

1. The pregnancy (if passed on) will jeopardize the mother's safety.
2. The likelihood of a child being born will suffer serious physical or mental disability.
3. In the case of publishing or publishing obscene writings, if they are justified for the common good, for the sake of science, art and so on.<sup>11</sup>

Similarly, the base of the criminal offender shall be distinguished between the grounds for the elimination of criminal prosecution. The basis for the disappearance is directed to the judge, while the prosecution's basis is for the prosecutor. The basis of criminal negation is divided into two parts, namely the justification and the basis of forgiveness. Judging from the dualistic view, the justification justifies the unlawful nature of the act, and the defendant should be released, whereas the base of forgiveness means the defendant's criminal act is proven, but the offender is forgiven.

An example of the basis for the abolition of prosecution is when an act has passed the time. In case of passing the time, the prosecutor can no longer prosecute the perpetrator of a crime. If the prosecutor prosecutes, the judge will refuse the claim or state the public prosecutor's claim is unacceptable. The loss of the right to demand because passing time is regulated in Article 78 of the Criminal Code while the abolition of the right to demand because it is regulated in Article 76 of the Criminal Code. It says "except in the case of a judge's ruling that can be changed, one cannot be prosecuted once again for the act for which the Indonesian judge has decided by a fixed decision.

The reason for the criminal offense is the reasons that allow the person performing the actual act has fulfilled the formulation of the offense, not to be punished, and this is the authority given by the law to the judge.<sup>12</sup> Unlike the case that can eliminate the prosecution, the reason for the criminal offense is decided by the judge by stating that the unlawful nature of the act of erasing or the mistake of the maker is removed because some laws and regulations justify the rules or that excuse the maker.

Such reasons exist in the third title of the first book of the Criminal Code; some things eliminate, reduce, or incriminate the criminal, namely:

1. Not able to be responsible, in Article 44 (1) of the Criminal Code, namely:  
"Whoever commits an act which cannot be accountable to him because his soul is flawed in growth or disrupted by illness, cannot be punished".
2. Not yet 16 years old, in Article 45 of the Criminal Code, namely:

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<sup>11</sup> Zainal Abidin Farid, *Hukum Pidana I*, Jakarta: Sinar Grafika, (1995), p. 401

<sup>12</sup> M. Hamdan, *Alasan Penghapusan Pidana Teori dan Studi Kasus*, Bandung: Refika Aditama,, (2012), p.27

- "In the case of a criminal prosecution of an immature person for committing an act before the age of sixteen, a judge may determine: order that the offender be returned to his or her parents, guardian, guardian, without any crime: or order the guilty to be handed over to the government without crime any".
3. Forced Power (*overmacht*), in Article 48 of the Criminal Code namely: *"Whoever commits acts because of the influence of force is not punished."*
  4. The forced defense, in Article 49 (1) and (2) of the Criminal Code, namely:
 

*Paragraph (1): "Not imprisoned, whoever commits the defense act is forced to himself or others, the honor of morality or his property and others because there is an attack or threat of imminent attack at that time which is against the law."*

*Paragraph (2): "an overcrowded defense, which is directly caused by great mental distress because of the attack or threat of the attack, is not punished."*
  5. Provisions of Shrimp, in Article 50 of the Criminal Code, namely: *"Anyone committing acts to enforce the provisions of the law, shall not be subject to punishment."*
  6. The office orders, in Article 51 (1) and (2) of the Criminal Code, namely:
 

*Paragraph (1): "Whoever commits an act to impose an order of office given by an authorized ruler, shall not be punished."*

*Paragraph (2): "an unauthorized position of office shall not result in the abolition of a criminal, unless the governed, in good faith, assumes the order is granted with authority and includes it in his work environment."*
  7. Penalties for office, in Article 52 of the Criminal Code, namely: *"If an official for committing a criminal act violates a special obligation of his office, or at the time of committing a criminal act of using his power, opportunity or means given to him because of his position, his penalty may be added by one-third."*

Similarly, by committing a crime and making a statement of error, then the act that started the incident must also be proved. In KBBI, errors are wrong; an unintentional mistake. When linked to a criminal offense, this unintentional mistake means that a person who is wrongdoing is indeed committing a crime, but he is not deliberate in doing so, the oversight occurs because of a condition is often known as the "dark eye." For example, A and B are husband and wife, A and B are negotiating a problem, but because they do not get settled, A and B finally quarreled, and A hit B for being too angry, when he did not intend to hit B. This was called khilaf. He commits a "punch" where punching implies an error, but without intention/intention.

According to M.v.T (Memorie van Toelichting) on the grounds of a criminal offender, mentioning so-called reasons for the unaccountability of a person or the reasons for his unlawfulness. This is based on two reasons as follows:<sup>13</sup>

1. The reason cannot be justified by someone who lies in the person.
2. The reason cannot be justified by someone who is outside of the person.

Of the two reasons in MVT (Memorie van Toelichting), it gives the impression that lawmakers firmly refer to the irresponsible emphasis of the person, the unlawfulness of the offender or the maker, not the unlawful acts or actions. This is reaffirmed in Article 58 of the Criminal Code which states that "the circumstances of self that cause the abolition, reduction or increment of punishment should only be taken into consideration against the person who commits the act or the offender's self."

Criminal acts in the declaration *khilaf* if connected with the reasons of the criminal eraser can be seen from the angle elements of the offense *delik*, the subjective elements, and objective elements. From the subjective element, i.e., from within the person of the perpetrator itself, for the reason of the criminal eraser which is the excuse of forgiveness is the reason that eliminates the mistake of the perpetrator. Since this concerns from within the person or the principal, the reason for this criminal offense includes the reason for the criminal offense as a subjective element. Whereas from the point of the objective element, that is the element which is outside the self of the perpetrator concerned about the deed, which is the justification reason. In this case, the unlawful nature of the offender's act is abolished. Since this concerns circumstances outside the person's personality, the reasons for this criminal offense include the reason for the criminal offense as an objective element.

The division of reason for the criminal offender by separating the excuse from the justification of this justification can also be seen from a dualistic view or flow in criminal law different from that of monistic flow or view. According to a dualistic view of the existence of the conditions for the imposition of a crime against the perpetrator, it is necessary to first prove the existence of a criminal act (as an objective element), then afterward, it is proved to be the offender's mistake (as a subjective element). Both of these are equally important to be judged as the basis for the imposition of a criminal.

Criminal acts of errors cannot be a reason for the release of criminal responsibility but may make judges' judgment not to aggravate the punishment to be charged against it. An oversight can mean that the crime is

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<sup>13</sup> *Ibid.*, p. 2

happening and done but without any deliberate element. Deliberation can be interpreted to do an act by knowing and wanting the action first, while the negligence is a form that is lower in degree than intentional. But it can also be said that negligence is the opposite of intent, because when in deliberate, a consequence arises from the will of the offender, then in the negligence is precisely the result of want, although the offender can predict.

## **D. Conclusions and Suggestions**

### **1. Conclusion**

- a. The declaration of khilaf can have legality; it is based on Jurisprudence No. 3901 K / Pdt / 1985 jo Article 189 Paragraph (1) of KUHAP. However, this oversight letter needs to be verified before the trial to become valid evidence. Through this letter of error, the defendant has justified the crime he committed. Such confession cannot make it free from the crime it has committed, so in the criminal procedural law the letter is recognized as evidence that the author must prove before the court, then the statement will have the evidentiary power, as the defendant's testimony.
- b. Criminal acts in the declaration khilaf if connected with the reasons of the criminal eraser can be seen from the angle elements of the offense delik, the subjective elements, and objective elements. Criminal acts of errors cannot be a reason for the release of criminal responsibility but may make judges' judgment not to aggravate the punishment to be charged against it. An oversight can mean that the crime is happening and done but without any deliberate element.

### **2. Suggestion**

- a. Basic understanding related to the statement in the criminal prosecution of a person who is considered guilty is needed. By using a declaration of khilaf as a way out of criminal matters, then the statement should be known in juridical rules. So, when an act there is a rule, it can be said that the legality of the act is recognized in writing.
- b. It is necessary to re-understand the conditions of criminal imposition on the perpetrator is required to first prove the existence of criminal acts (as an objective element), then afterward it is proved wrongdoer (as a subjective element). Both of these matters become important for the judge as the basis for the imposition of criminal punishment not as the abolition of criminal acts (liberation), and the criminal act of errors cannot be a reason for the release of criminal responsibility, but may make judges' judgment not to aggravate the punishment to be charged against it.

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